

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6033 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVESH B. PATNI

Versus

ASSTT. LABOUR COMMISSIONER

Appearance:

MRS. SANGITA PAHWA FOR MR PM THAKKAR for Petitioner
SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 31/03/97

ORAL JUDGEMENT

1. The petition raises a short issue. The petitioner alleges himself to be in service of Life Insurance Corporation of India at Doraji Branch, Doraji, District : Rajkot as a Clerk, since 8.8.88 and his services were terminated on 1.1.1990 without following the conditions prescribed under Section 25F and 25G of the Industrial Disputes Act, 1947. Since conciliation

proceedings before the Conciliation Officer failed and failure report was submitted to the appropriate Government, Central Government in the present case, by its order dated 9.2.1994 refused to refer the case to the appropriate Labour Court/Industrial Tribunal, in the following terms:

"The workman had not put in 240 days of service to be entitled to any notice or terminal benefits under section 25F of the ID Act, 1947"

It is the aforesaid order at Annexure C which has been challenged before this Court. No one has put in appearance for the respondents in spite of service. Heard the learned counsel for the petitioner.

2. Law is trite that appropriate Government while considering the question whether a particular industrial dispute has to be referred for adjudication to the Labour Court/Industrial Tribunal, it cannot itself be adjudicator of the dispute and refused to make a reference for adjudication. It is true that making reference of an industrial dispute for adjudication rests in the discretion of appropriate Government depending upon very many circumstances, primary consideration being maintenance of industrial peace, but the discretion of not making a reference cannot be exercised by adjudicating the dispute itself. The impugned order reproduced above speaks for itself, that it is an adjudication by Central Government of the question, whether the petitioner fulfils the condition to be entitled to the beneficial provisions of Chapter VA of the Industrial Disputes Act. This was beyond the jurisdiction of the appropriate Government to have gone into.

3. For the reasons aforesaid, this petition succeeds. The impugned order dated 9.2.1994 is quashed and the respondents are directed to consider the case of making the reference of the dispute raised by the petitioner within a period of one month from the date of service of the writ in accordance with law. Rule made absolute. No order as to costs.
